



## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

### Lower Elwha Tribal Community; Liquor Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Lower Elwha Tribal Community Liquor Ordinance. This Ordinance certifies the Tribe's liquor licensing laws to regulate and control possession, sale, and consumption of liquor within the jurisdiction of the Tribe's reservation in conformity with the laws of the State of Washington for the purposes of generating Tribal revenues. Enactment of this statute will help provide a source of revenue to strengthen Tribal government, provide for economic viability of Tribal enterprises, and improve delivery of Tribal government services.

**DATES:** This ordinance shall become effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Sharon Jackson, Tribal Government Services, Bureau of Indian Affairs, 911 Northeast 11th Avenue, Portland, OR 97232; telephone: (503) 231-6702; fax: (503) 231-2201.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the *Federal Register* notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the

Lower Elwha Tribal Community adopted Resolution Number: 04-23 (Liquor Ordinance) on January 09, 2023, as amended by Resolution Number 41-23 (Revised Liquor Ordinance) on April 03, 2023.

**Bryan Newland,**

*Assistant Secretary–Indian Affairs.*

The Lower Elwha Tribal Community – Alcoholic Beverages Ordinance shall read as follows:

### **1. General Purpose**

The Lower Elwha Tribal Community, also known as the Lower Elwha Klallam Tribe (the “Tribe”) has a paramount interest in protecting the health, safety, and general welfare of its members, residents, and persons doing business within or visiting the Tribe's territorial jurisdiction, and in promoting the orderly economic development of the tribal community. The purpose of this Ordinance is to exercise the Tribe’s sovereign and delegated authority to regulate the sale, distribution, and taxation of liquor within the Tribe’s territorial jurisdiction.

### **2. Authority**

This Statute is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 586, 18 U.S.C. 1161) and by powers vested in the Tribal Business Committee of the Lower Elwha Tribal Community to develop, adopt and enforce statutes as authorized under Article IV, Section 1 of the Constitution of the Lower Elwha Tribal Community, adopted April 6, 1968, as subsequently amended.

### **3. Scope**

3.1. This Ordinance applies to the full extent of the sovereign jurisdiction of the Tribe and any and all jurisdictional authority delegated by the United States under 18 U.S.C. § 1161 and other laws. The Tribe has inherent authority under its Constitution to protect the public health and safety and to regulate the conduct of business within its territorial jurisdiction; specifically, Article IV, Section 1(b) of the Tribe's Constitution authorizes the Tribe to regulate the use of community property, and Article IV, Section 1(f) thereof authorizes the Tribe to enact ordinances to levy and collect taxes and to otherwise regulate the conduct of business activities within the Tribe's territorial jurisdiction.

3.2. Compliance with this Ordinance is a condition of any entry upon or use of any land or premises within the Tribe's territorial jurisdiction.

3.3 Any person who resides, conducts business, engages in a business transaction, patronizes a business operated by the Tribe, receives benefits from the Tribe, acts under Tribal authority, or enters the Tribe's territorial jurisdiction has consented to the following:

3.3.1. To be bound by the terms of this Ordinance;

3.3.2. To the exclusive authority of the Tribe for purposes of administering and enforcing this Ordinance and to the exclusive jurisdiction of the Lower Elwha Tribal Court for legal actions arising under this Ordinance; and

3.3.3. To detainment, service of summons and process, and search and seizure in conjunction with legal actions arising pursuant to this Ordinance.

3.4. This Ordinance is intended to be in addition to, supplementary to, and consistent with Federal law, and will not be construed as contrary to Federal law, or as inconsistent with any law of the State of Washington relative to the sale of liquor

within the Tribe's territorial jurisdiction that has been made applicable by Federal law.

#### **4. Repeal of Prior Liquor Control Laws**

4.1. Any previously enacted ordinances and resolutions of the Tribe regulating, authorizing, prohibiting, or in any way dealing with the sale of liquor are hereby repealed and declared to be of no further force and effect, with the exception of the provisions of the Elwha Justice Code Section 9.12, Drug and Alcohol Violations.

4.2. The provisions of this Ordinance are prospective only from the date of its enactment. This Ordinance does not affect any valid license or permit held by a Tribal liquor retailer that may have been previously issued by the State of Washington, nor does it preclude the Tribe from replacing any such license or permit in accordance with a Tribal-State Liquor Compact or Agreement.

#### **5. Definitions**

As used in this Ordinance, the following definitions apply:

5.1. "Community Council" means the Lower Elwha Tribal Community Council, as defined in Article III, Section 1 of the Tribe's Constitution, as amended.

5.2. "Business Committee" means the Lower Elwha Tribal Business Committee, as defined in Article III, Section 2 of the Tribe's Constitution, as amended.

5.3. "Territorial jurisdiction," consistent with the definition of "Indian country" in 18 U.S.C. § 1151(a) and (c), means:

5.3.1. All land within the limits of the Lower Elwha Indian Reservation, notwithstanding the issuance of any patent, and, including rights of way running through the Reservation; and

5.3.2. All other lands held by the United States in trust for the benefit of the Tribe, including rights of way running through the same.

5.4. “Liquor” has the same meaning as in the Revised Code of Washington, RCW 66.04.010 (1), (3), (25), (26) and (43), as of the effective date of this Ordinance.

5.5. “Sale” and “sell” has the same meaning as in the Revised Code of Washington in RCW 66.04010 (39), as of the effective date of this Ordinance.

5.6. “Tribal liquor retailer” means a liquor retailer wholly owned and controlled by the Lower Elwha Klallam Tribe and located within the Tribe’s territorial jurisdiction.

5.7. “Liquor distributor” means a State-licensed entity located outside the Tribe’s territorial jurisdiction that sells liquor to a Tribal liquor retailer for resale within the Tribe’s territorial jurisdiction.

## **6. Liquor Sales by Tribal Liquor Retailers Only**

6.1. Only Tribal liquor retailers may obtain a license under this Ordinance to sell liquor within the Tribe’s territorial jurisdiction.

6.2. A Tribal liquor retailer must obtain authorization under this Ordinance by applying in writing to the Business Committee for a license to sell liquor at a specific location within the Tribe’s territorial jurisdiction. The Business Committee, in its sole discretion, will determine whether to grant a license. Each license granted will specify what liquor products are authorized to be sold pursuant to the license as well as all other terms, which must be set forth in writing and approved by Resolution of the Business Committee.

6.3. All Tribal liquor retailers must comply with all provisions of this Ordinance, with all applicable provisions of any license issued hereunder, and with any rules and regulations promulgated hereunder by the Business Committee.

6.4. A tribal liquor retailer, or the Tribe on behalf of such retailer, must also obtain authorization from the State of Washington, or a certification from the State that no such authorization is required, before it may commence selling liquor within the Tribe's territorial jurisdiction.

6.5. Liquor distributors located outside the Tribe's territorial jurisdiction that are duly licensed by the State of Washington are not required to obtain a license under this Ordinance in order to distribute liquor to any Tribal liquor retailer authorized under this Ordinance.

## **7. Tribal Liquor Tax**

7.1. The Tribal Taxing Authority, vested in the office of the Chief Financial Officer, has the authority and responsibility to collect, audit, and issue fees, licenses, taxes, and permits in accordance with this Ordinance.

7.2. In consultation with the Office of Tribal Attorney, the Tribal Taxing Authority may propose a Tribal liquor tax on all sales of liquor within the Tribe's territorial jurisdiction, and any rules and regulations governing matters under Section 6.1 above. All such proposed taxes, fees, and regulations must be approved by written resolution of the Business Committee.

7.3. Any Tribal liquor tax must be remitted to the Tribe on a quarterly basis.

7.4. The Tribe will use its liquor tax revenue for essential tribal government functions and services.

## **8. Prohibitions and Enforcement; License Revocation**

8.1. The purchase, sale, and dealing in liquor within Tribe's territorial jurisdiction by any Tribal liquor retailer, or any other person, party, firm, corporation, or entity,

except as provided in this Ordinance is hereby declared unlawful. Without limitation as to any other penalties and fines that may apply, any violation of this subsection is a civil infraction punishable by a fine of up to five hundred dollars (\$500.00).

8.2. Nothing in this Ordinance exempts a Tribal liquor retailer from compliance with the provisions of Section 9.12, Drug and Alcohol Violations, of the Elwha Justice Code.

8.3. The Elwha Tribal Police are authorized to enforce the provisions of this Ordinance. The Lower Elwha Tribal Court has exclusive jurisdiction to determine any and all cases or disputes arising under this Ordinance.

8.4. The Business Committee may revoke any license granted under this Ordinance for non-compliance, after providing written notice to the license holder and a fair and reasonable opportunity to appear in person to demonstrate why the license should not be revoked. The decision of the Business Committee to revoke a license is final, with no opportunity for judicial review. Any search or seizure of property related to such a revocation will be done in accordance with Sections 6.7 and 6.8 of the Lower Elwha Judicial Code and Court Procedures.

## **9. Authority to Enter Into Inter-Governmental Agreements; Compliance with the Laws of the State of Washington**

9.1. The Business Committee is authorized to approve and enter into agreements with the Washington State Liquor and Cannabis Board, the Washington State Department of Revenue, and any other cognizant agency of the State concerning the authorization, taxation, or other regulation of liquor sales within the Tribe's territorial jurisdiction. The Business Committee's approval must be memorialized in a Resolution, with a copy of the agreement attached thereto.

9.2. Tribal liquor retailers must comply with any applicable Washington State liquor law standards to the extent required by 18 U.S.C. § 1161 or any agreement entered into under Section 8.1 above.

## **10. Severability**

If any section, provision, phrase, addition, word, sentence, or amendment of this Ordinance or its application to any person is held invalid, that invalidity will not affect the other provisions or applications of this Ordinance that can be given effect without the invalid application.

## **11. Sovereign Immunity Preserved**

Nothing in this Ordinance constitutes or may be construed as a waiver of the Tribe's sovereign immunity from unconsented suit. The Tribe will not enter into any inter-governmental agreement regarding the regulation of liquor within the Tribe's territorial jurisdiction that waives the Tribe's sovereign immunity for any purpose unless such waiver is expressly approved in a Resolution of the Business Committee. No Tribal liquor retailer may waive the sovereign immunity it possesses as an entity of the Tribe, or waive the Tribe's sovereign immunity, without clear, express, written approval of the Business Committee.

## **12. Effective Date**

Except where a different effective date is required by Federal law, this Ordinance is effective immediately upon publication by the United States Department of the Interior in the *Federal Register*.

## **13. Authority to Amend**

The Business Committee is authorized to amend this Ordinance as it may see fit in the exercise of its sound judgment on behalf of the Tribe and to take any steps necessary to



ensure that such amendment is properly approved and effective in accordance with applicable Federal law.

[FR Doc. 2023-12920 Filed: 6/15/2023 8:45 am; Publication Date: 6/16/2023]